

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO, *ex rel.*
State Engineer

Plaintiff,

vs.

ROMAN ARAGON, *et al.*,

Defendants.

69cv07941-BB

RIO CHAMA STREAM SYSTEM
Section 1, Chama Mainstream

Subfile No. 571

MOTION FOR SUBSTITUTION OF PARTIES

COMES NOW the Plaintiff State of New Mexico, *ex rel.* State Engineer and pursuant to Fed. R. Civ. P. 25(a)(1) moves the Court to issue its order substituting SELEDON GARCIA and ALICE GARCIA for defendant BENJAMIN GARCIA, SR. in these proceedings with respect to the water rights under Subfile 571, TRACT 3.48 in the Chama Mainstream Section, and as grounds states the following:

1. The subfile order entered on July 23, 1971 (Doc. No. 1768-9) (Subfile 571, Tract 3.48) in connection with defendant Benjamin Garcia, Sr. included a priority date of 1895 for the water rights described in the order, water rights under the Acequia del Rito del los Frijoles (a/k/a Rio Frijoles Ditch). The Acequia del Rito de los Frijoles is a private ditch, and there are no other water rights associated with that ditch. The State's historical consultant Dr. John O. Baxter has determined that the irrigated lands under the Acequia del Rito Frijoles merit a priority date of 1735 based on the original occupation of these and other lands by Gerónimo Martín in that year.

2. Seledon Garcia and Alice Garcia are the current owners of Tract 3.48 described in the

subfile order entered on July 23, 1971. Benjamin Garcia, Sr. is deceased.

3. The State of New Mexico and Seledon Garcia and Alice Garcia wish to enter into a stipulation on the priority date (1735) of the irrigation water rights appurtenant to Tract 3.48, and to revise the priority date in the subfile order entered on July 23, 2007, pursuant to the redetermination of priority dates ordered by the Court for the Chama Mainstream Section of the Rio Chama Stream System. *See Amended Order on the Adjudication of Water Right Priorities* filed July 8, 1994 (Docket No. 3496).

WHEREFORE the State of New Mexico requests the Court to enter its order substituting Seledon Garcia and Alice Garcia for defendant Benjamin Garcia, Sr. in these proceedings.

Respectfully submitted,

/s/ Ed Newville
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of June 2008 I filed the foregoing electronically through the CM/ECF system which caused the parties listed on the electronic service list, as more fully set forth in the Notice of Electronic Filing, to be served via electronic mail, and served the following non-CM/ECF Participants in the manner indicated:

via first class mail, postage prepaid addressed as follows:

Dennis W. Montoya, Esq.
Attorney for Seledon and Alice Garcia
P.O. Box 15235
Rio Rancho, NM 87174-0235

/s/ Ed Newville
EDWARD G. NEWVILLE